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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 75

ELMER UVEGES, PETITIONER,

vs.

COMMONWEALTH OF PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED DECEMBER 1, 1947.

CERTIORARI GRANTED JUNE 7, 1948.

SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

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[fol. 1]

IN THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

No. 1482A Miscellaneous Docket

COMMONWEALTH OF PENNSYLVANIA ex rel. ELMER UVEGES, Apt.

v.

STANLEY P. ASHE, Warden Western State Penitentiary, Pittsburgh, Pennsylvania

DOCKET ENTRIES

August 22, 1947, petition of appellant for allowance of appeal from judgment of the Superior Court at No. 148 April Term, 1947, with acceptance of service endorsed thereon, filed.

ORDER

September 29, 1947, petition denied.

Per CURIAM:

June 11, 1948, Certified copy of order on Forma Pauperis, Motion and Petition for Writ of Certiorari of Supreme Court of the United States, as follows, filed:

> On petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.
>
> On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 844.
>
> June 7, 1948.

September 7, 1948, Supplemental Certiorari to the Court of Common Pleas of Allegheny County at No. 3611 October Term, 1946-C, issued.

September 7, 1948, Praecipe of counsel for Appellant for certification in forma pauperis of the record to the Supreme Court of the United States, filed.

September 8, 1948, Record filed.

[fol. 2] IN THE SUPREME COURT OF PENNSYLVANIA, AT PITTSBURGH, APRIL TERM, 1947

No. 148

COMMONWEALTH OF PENNSYLVANIA ex rel. ELMER UVEGES

v.

STANLEY P. ASHE, Warden Western State Penitentiary, Pittsburgh, Pennsylvania

Appeal of Elmer Uveges

DOCKET ENTRIES

Appeal from the judgment of the Court of Common Pleas of Allegheny County at No. 3611 October Term, 1946-C

February 1, 1947, Appeal and affidavit filed and writ exit.

February 8, 1947, Notice of Appeal filed.

April 8, 1947, Record filed.

April 24, 1947, Submitted Decision 236.

July 17, 1947. Order is affirmed, Rhodes, P. J.

July 29, 1947, Remitted.

August 22, 1947, Petition of appellant for leave to appeal to the Supreme Court filed at No. 1482A Miscellaneous Docket.

For Appellant: Elmer Uveges, I. P. P.

For Appellee: Artemas C. Leslie, Louis L. Kaufman.

[fol. 3] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA, OCTOBER TERM, 1946 C

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

No. 3611

COMMONWEALTH OF PENNSYLVANIA ex rel. ELMER UVEGES

vs.

STANLEY P. ASHE, Warden Western State Penitentiary

APPEARANCE DOCKET ENTRY

October 1, 1946, Habeas Corpus—Rule. Petition and Affidavit filed. October 1st, 1946, Petition presented, ordered filed and a Rule is granted on the District Attorney of Allegheny County, Penna. and Stanley P. Ashe, Warden Western State Penitentiary, Pittsburgh, Pa. to show cause why a writ of Habeas Corpus should not issue. Rule returnable to October 21, 1946. All costs to be paid by Allegheny County. January 20, 1947. After due consideration of the petition filed and the answer made, the petition for writ of habeas Corpus is dimissed and the writ is denied. The Prothonotary is directed to mail a copy of this opinion and Order of Court to the Petitioner and to Stanley P. Ashe, Warden of the Western State Penitentiary. All costs to be paid by County of Allegheny. Eodie, Memo, Opinion filed. February 7, 1947, Certiorari from the Superior Court on appeal of Elmer Uveges filed. February 11, 1947, Answer to Petition for Writ of Habeas Corpus presented in open Court and the same is directed to be filed nunc pro tunc as of October 21, 1946. July 29th, [fol. 4] 1947, Remitturer from Superior Court filed, showing "Order is affirmed. Exemplification filed. September 7th, 1948. Supplemental Certiorari from the Supreme Court on appeal of Elmer Uveges filed.

From the Record.

David B. Roberts, Prothonotary. By E. L. Herndon, Deputy.

[fol. 5] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY

[Title omitted]

ORDER GRANTING RULE TO SHOW CAUSE

October 1st, 1946, the within petition is ordered filed and a rule is granted on the District Attorney of Allegheny County, Pennsylvania and Stanley P. Ashe, Warden, Western State Penitentiary, Pittsburgh, Pennsylvania, to show cause why a writ of habeas corpus should not issue; rule returnable to October 21, 1946.

All Costs to be paid by Allegheny County.

By the Court.

H. R., President Judge.

[fol. 6] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY

[Title omitted]

PETITION FOR WRIT OF HABEAS CORPUS—Filed October 1, 1946

To the Hon. Joseph P. Egan, Judge of the Court of Common Pleas:

Elmer Uveges, hereinafter named relator, now in the custody of Warden Stanley P. Ashe, respectfully submits:

That on October 27, 1938, at the age of seventeen, he and a companion of the same age pleaded guilty before the Hon. Frank P. Patterson, trial judge, to four indictments charging Burglary. The prison sentence imposed by the court was five to ten years on each indictment to run consecutively, making a total of twenty to forty years. Relator now claims that the proceedings of October 27, 1938, were contrary to "due process of law," and directly opposed to latest rulings issuing from both higher courts. In support of said claim he respectfully sets forth:

1. Relator was not accorded his constitutional right to be represented by and have the advice of counsel. He was

not advised by the court of this right and no offer was extended to supply counsel. In the case of Com. ex. rel. Shultz v. Smith, Warden, No. 206, Pa. Superior Ct., Misc. Docket No. 43, President Judge Keller wrote:

> "The right to be represented by counsel is a fundamental right, going to the very basis of criminal law, and places on the trial judge the onus to inform the defendant of his rights and to assist him in obtaining the benefits of those rights. The failure of the [fol. 7] court to inform him of his right amounts to a denial of the right. . . . The failure of the court to so inform him or to appoint counsel for him was fundamental error."

From the opinion of Mr. Justice Sutherland in Powell v. Alabama, 287 U. S. 45, are these words: "He requires the guiding hand of counsel at every step in the proceedings against him." Here the Honorable Justice is referring to an *adult* and intelligent layman forced to defend himself without counsel.

2. Relator's signature does not appear on any of the indictments. However, he does recall signing a paper which he now believes to have been a "waiver." The contents of this paper were not read by him, nor was he informed of their nature. This proceeding is contrary to an Act of Assembly, June 11, 1935, P. L. 319, No. 141, Sec. 1, which reads as follows:

> "In all criminal cases, except where a sentence of death or *imprisonment of ten years or more* may be imposed, the defendant shall have the privilege, *with the consent of his attorney of record*, the judge and the district attorney, to waive trial by jury. Such waiver must be in writing, signed by the defendant, and shall operate as an election by the defendant to be tried by a judge without a jury." (Emphasis by relator.)

3. In law the status of a 17-year-old is defined as a child, or juvenile. The signature of such a person to any contract entailing great responsibility would be invalid except under conditions sanctioned by a court of law. If this guardianship is the protection of a minor in civil actions, is it not equally important that similar protection be extended

in criminal actions? Yet this relator, a minor without any knowledge of law or his rights under it; in a situation described by one Superior Court jurist as "hostile territory," was compelled to shoulder a burden which Mr. Justice Sutherland declared was beyond the power of an intelligent layman. Nervous and unable to think clearly, frightened by threats of dire consequences if he dared to stand trial, relator pleaded guilty under the direction of an [fols. 8-9] assistant district attorney, with the understanding that a sentence to Huntington Reformatory would be imposed.

It may be relevant here to mention that in June, 1939, a law was enacted increasing the jurisdiction of the Juvenile Court to include sixteen- and seventeen-year-old children. Although enacted after the twenty to forty years was imposed, it preceded relator's eighteenth birthday which was July 5, 1939.

Relator therefore prays that a writ of habeas corpus issue, commanding Warden Stanley P. Ashe to produce the body of Elmer Uveges before your honorable court on a certain day, there to do and receive what shall be considered concerning this petition.

And relator will ever pray, etc.

Elmer Uveges, Relator.

Elmer Uveges, being duly sworn, on oath deposes and says that he is the relator named in the foregoing petition, and that the contents are true of his own knowledge.

Subscribed and sworn to this 26 day of September, 1946. Elmer Uveges, Relator.

R. C. Wieseckel, Notary Public.

My Commission Expires May 1, 1948. (Seal).

[fol. 9a] [File endorsement omitted.]

[fol. 10] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA, OCTOBER TERM, 1946-C

No. 3611

Sur: Petition for writ of habeas corpus

COMMONWEALTH OF PENNSYLVANIA, ex rel., ELMER UVEGES

versus

STANLEY P. ASHE, Warden Western State Penitentiary, Pittsburgh, Pennsylvania

MEMO OPINION—Filed January 20, 1947

ROWAND, P. J.:

The petition for writ of habeas corpus in this case was received through the mail and the same day was ordered filed. A rule was granted on Stanley P. Ashe, Warden, Western State Penitentiary, and the District Attorney of Allegheny County to show cause why a writ of habeas corpus should not issue. Answers have been filed.

It is true, as alleged in said petition, that the relator did plead guilty before his Honor, Frank P. Patterson, trial judge of this court, on four indictments charging burglary. Sentence was imposed on each indictment and under the sentences his minimum term will expire October 15, 1958. The sentences are regular and in conformity with the practice and law.

There can be no complaint as to the sentences. It is also set forth in the Answer of the District Attorney that there are at least eight additional indictments in which the de- [fol. 11] fendant pleaded guilty and sentence was suspended by reason of sentences at other indictments. Relator complains that he was not accorded his Constitutional right to be represented by and have the advice of counsel. It is not alleged that he was denied a request to be represented by counsel. While a signature does not appear on the indictments, but that omission is not an error nor can it in any way effect the legality of a sentence imposed on a plea of guilty in open court.

The records disclose that there was no jury trial but the relator, with other defendants, appeared before the

court and entered a plea of guilty. We know of no law or ruling that a minor cannot enter a plea of guilty and be sentenced for a crime. As was held in the case of Com. ex. rel. James Slifko v. Stanley P. Ashe, Warden, 144 Pa. Super. Ct. 593, it was stated at page 595:

> "There is no provision in the Bill of Rights in our Constitution requiring the Court to appoint counsel to defend or represent one accused of crime who announces his desire to plead guilty to the offense charged before trial:
>
> Com. ex rel. Curtis v. Ashe, 139 Pa. Sup. Ct. 417;
> Com. ex rel. Campbell v. Ashe, 141 Pa. Sup. Ct. 408."

Further, the case of Com. ex rel. Campbell v. Ashe, 141 Pa. Super. Ct. 408, at page 411, the Court states:

> "As the relator severally pleaded guilty to all the indictments, the Court was under no duty to appoint counsel to represent them. They knew whether or not they were guilty of the offenses charged. They do not, even in these proceedings, deny their guilt."

We have examined the record in this case and find no error that would warrant the issuing of the writ as prayed for. Therefore, the petition is dismissed and the writ denied.

[fol. 12] ORDER OF COURT

January 20, 1947, after due consideration of the petition filed in this case and Answer made by the District Attorney of Allegheny County, and Stanley P. Ashe, Warden, the petition for writ of habeas corpus is dismissed and the writ is denied.

The Prothonotary is directed to mail a copy of this opinion and order of court to the petitioner and to Stanley P. Ashe, Warden of the Western State Penitentiary.

All costs to be paid by County of Allegheny.

By the Court, H. R.

[fol. 12a] [File endorsement omitted.]

[fol. 13] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY

[Title omitted]

ANSWER—Filed nunc pro tunc as of October 21, 1946

To the Honorable, the Judges of Said Court:

Now comes Artemas C. Leslie, District Attorney of Allegheny County, Pennsylvania, by Louis L. Kaufman, Esq., who files the following Answer.

First: It is admitted that on October 27, 1928, the within relator pleaded guilty to four indictments charging him with Burglary, and was sentenced five to ten years on each indictment; the sentences to run consecutively. These indictments are indexed at Nos. O&T 81, 82, 83 and 84 October Term.

Second: It is further averred that the same relator was indicted at O&T 85 to 93 inclusively; and sentences on these were suspended by reason of the sentences in Paragraph One.

Third: It is denied that relator was deprived of his Constitutional rights to be represented by counsel. It is not alleged that he was denied a request for such representation.

Fourth: It is admitted that relator's signature does not appear on the indictments, but it is averred by the Com-[fol. 14] monwealth such omission to sign the plea of guilty is not a vital error; nor does it effect the legality of the sentence imposed on a plea of guilty in open court.

Fifth: It is denied that this relator signed a waiver of a Jury Trial. The records indicate that there was no jury trial, and that the relator pled guilty. In the opening paragraph of the relator's petition, he admits it was a plea of guilty.

Sixth: It is denied that a plea of guilty cannot be entered by a minor. Memo: In the case of Commonwealth ex rel. James Slifko v. Stanley P. Ashe, Warden, No. 144 Pa. Superior Ct. 593, where Warden stated at page 595:

> "There is no provision in the Bill of Rights in our Constitution requiring the Court to appoint counsel to

defend or represent one accused of crime who announces his desire to plead guilty to the offense charged before trial: Com. ex rel. Curtis v. Ashe, 139 Superior Ct. 417; Com. ex rel. Campbell v. Ashe, 141 Superior Ct. 408."

The same case holds that a plea of guilty is not required to be *entered on* the indictment; although it does hold that it is better practice so to do, and that it is "desirable" for the defendant who signs the plea. In the case of Com. ex. rel. Campbell v. Ashe, 141 Superior Court, 408, at 411 the Court states:

"As the relator severally pleaded guilty to all the indictments, the Court was under no duty to appoint counsel to represent them. They knew whether or not they were guilty of the offenses charged. They do not, even in these proceedings, deny their guilt."

Commonwealth cites in the case of Com. ex. rel. Cohen v. Ashe, 123 Superior Court, 5, wherein the Court stated at page 8:

"The duty of the trial judge in the criminal case to inform a defendant, who appears without counsel, that he has a right to be heard by himself and his counsel and subpoena witnesses, who might testify for him, is not limited by the age or experience of the accused nor by the gravity of the offense; it applies with equal force to every defendant in a criminal prosecution who appears without counsel."

[fol. 15] Wherefore, the respondent prays your Honorable Court that his petition of Writ of Habeas Corpus be discharged.

And he will ever pray, etc.

Artemas C. Leslie, District Attorney, by Louis L. Kaufman, Esq.

[fols. 15a-17a] ORDER OF COURT

And now this 10th day of February, 1947, the within answer is directed to be filed nunc pro tunc as of Oct. 21, 1946.

(S.) By the Court, Rowand, P. J.

[fol. 18] IN THE SUPERIOR COURT OF PENNSYLVANIA, APRIL TERM, 1947

No. 148

No. 236

COMMONWEALTH OF PENNSYLVANIA ex rel. Elmer Uveges

v.

STANLEY P. ASHE, Warden, Western State Penitentiary, Pittsburgh, Pennsylvania

Appeal from Order of the Court of Common Pleas of Allegheny County, No. 3611 October Term, 1946

OPINION—Filed July 17, 1947

Opinion by RHODES, P. J.:

This is an appeal by relator from an order of the Court of Common Pleas of Allegheny County discharging rule and dismissing relator's petition for writ of habeas corpus.

On October 27, 1938, relator was sentenced by the Court of Oyer and Terminer of Allegheny County, on four district attorney's "indictments" (Nos. 81, 82, 83, and 84, October Term, 1938), charging burglary and receiving stolen goods, prepared under the Act of April 15, 1907, P. L. 62, 19 PS § 241, without presentation to the grand jury. Relator pleaded guilty in open court to the four bills; the pleas of guilty were endorsed on the indictments. The sentences imposed were from five to ten years on each bill of indictment, the same to run consecutively from April 15, 1938.

Relator, in his petition for writ of habeas corpus, set forth (1) that his signature does not appear on any of the indictments; and (2) that he was not accorded his constitutional [fol. 19] right to be represented by and have the advice of counsel at the time of his plea and sentences.

It does not appear that the relator signed the plea of guilty endorsed on the indictments, but in his petition he concedes having signed a paper which he believes to have been a waiver. His plea was entered and endorsed on each bill:

We have previously stated that the better practice in connection with a district attorney's bill under the Act of April

15, 1907, P. L. 62, as amended by the Act of June 15, 1939, P. L. 400, 19 PS § 241, is to have the defendant affix his signature or witnessed mark to the plea endorsed thereon. Com. ex rel. Mayernick v. Ashe, 139 Pa. Superior Ct. 421, 12 A. 2d 452; Com. ex rel. Banky v. Ashe, 142 Pa. Superior Ct. 396, 16 A. 2d 668; Com. ex rel. Slifko v. Ashe, 144 Pa. Superior Ct. 593, 20 A. 2d 799. See, also, form of endorsement suggested by the Supreme Court in Com. ex rel. Moore v. Ashe, 341 Pa. 555, 557, 19 A. 2d 734. But omission to have the bill signed by the defendant who entered the plea does not constitute a fatal defect, nullifying the sentence imposed thereon. Com. ex rel. Banky v. Ashe, supra, 142 Pa. Superior Ct. 396, 401, 16 A. 2d 668. Such a defect may be cured by subsequent proceedings in open court. It appears from the record that relator was there arraigned and pleaded guilty before Judge Frank P. Patterson; the record leaves no ground for uncertainty as to the crimes to which relator pleaded guilty in open court. Com. ex rel. Moore v. Ashe, supra, 341 Pa. 555, 560, 19 A. 2d 734.

In Com. ex rel. Dende v. Ashe, 144 Pa. Superior Ct. 598, 20 A. 2d 802, the validity of an indictment, closely analogous to those involved in the present case, was questioned. In that case, as in the one before us, the indictment had not been signed by the district attorney; the endorsements con- [fol. 20] taining the plea of guilty as provided by the Act of April 15, 1907, P. L. 62 (identical in form with the endorsement in the present case), were not signed by the defendants or attested by the clerk. The authentication appearing upon the indictment consisted of the initial of the judge who imposed the sentences, written beneath the sentences endorsed on the back of the indictment. We affirmed the orders of the court below refusing to discharge defendants on writs of habeas corpus, and remanding them to the custody of the warden of the penitentiary. In the present case the docket entries show that appellant pleaded guilty before Judge Patterson to the four bills on which he was sentenced, and in addition an application for clemency, addressed to the Board of Pardons and signed and sworn to by relator on February 8, 1946, indicates that he had a substantial understanding of the crimes charged, and contains no suggestion that he then considered himself innocent of any part thereof. In fact, relator does not now assert that he is innocent of all the crimes charged in the

indictments, or that he failed to understand the nature of the offenses to which he pleaded guilty. See Com. ex rel. Shaw v. Smith, 147 Pa. Superior Ct. 423, 425, 24 A. 2d 724. His present assertion that he intended to enter only a single plea of guilty and not separate pleas of guilty to each of the bills of indictment cannot be used to set aside the legal consequences of his recorded pleas. Com. ex rel. Kuklich v. Baldi, 150 Pa. Superior Ct. 390, 28 A. 2d 496. Moreover, he has not undertaken to specify to which of the offenses charged his plea of guilty was confined, and, in his petition for writ of habeas corpus, states that he "pleaded guilty before the Hon. Frank P. Patterson, trial judge, to four indictments charging burglary."

Relator's second contention is that he was not accorded his constitutional right to be represented by and have the [fol. 21] advice of counsel, that he was not advised by the court of this right, and that no offer was extended to supply counsel. In Com. ex rel. Shaw v. Smith, supra, 147 Pa. Superior Ct. 423, 24 A. 2d 724, the petition for the writ of habeas corpus set forth similar grounds for discharge. We there held that the relator was not deprived of any fundamental right guaranteed by the Constitution of this Commonwealth or by the Federal Constitution.

(1) Article 1, § 9, of the Pennsylvania Constitution, PS, guarantees to accused persons only the right to be "heard by counsel." Com. ex rel. McGlinn v. Smith, 344 Pa. 41, 48, 24 A. 2d 1.

(2) In capital crimes only, it is provided by statute that "learned counsel" shall be "assigned to the prisoners" upon all trials. Act of May 31, 1718, 1 Sm. L. 105, § 4, 19 PS § 783, and Act of March 22, 1907, P. L. 31, § 1, 19 PS § 784.

(3) Failure of the court to inquire whether the defendant desires counsel or to offer to appoint counsel in other than capital cases does not constitute the deprivation of a fundamental right guaranteed by the Constitution of this Commonwealth, where the defendant enters a plea of guilty either to a bill of indictment returned against him by the grand jury (Com. ex rel. Shaw v. Smith, supra, 147 Pa. Superior Ct. 423, 424, 24 A. 2d 724), or to a district attorney's bill prepared under the Act of April 15, 1907, P. L. 62, 19 PS § 241 (Com. ex rel. Slifko v. Ashe, supra, 144 Pa.

Superior Ct. 593, 595, 20 A. 2d 799; Com. ex rel. Withers v. Ashe, 350 Pa. 493, 495, 39 A. 2d 610).

(4) The sixth Amendment to the Federal Constitution giving to an accused in all criminal prosecutions the right to have the assistance of counsel for his defense applies only to trials in the Federal courts. Betts v. Brady, 316 U. S. 455, 461, 62 S. Ct. 1252, 86 L. Ed. 1595, 1601; Com. ex rel. McGlinn v. Smith, supra, 344 Pa. 41, 45, 24 A. 2d 1, 3.

[fol. 22] (5) The Fourteenth Amendment to the Federal Constitution relating to due process does not impose upon the states any uniform policy concerning representation by counsel in criminal cases; and it cannot be said that the amendment embodies an inexorable command that no trial for any offense, or in any court, would be fairly conducted and justice accorded a defendant who is not represented by counsel. Betts v. Brady, supra, 316 U. S. 455, 473, 62 S. Ct. 1252, 86 L. Ed. 1595, 1607; Com. ex rel. McGlinn v. Smith, supra, 344 Pa. 41, 49, 58; Com. ex rel. Shaw v. Smith, supra, 147 Pa. Superior 423, 433, 24 A. 2d 724; Mayo v. Wade, 5 Cir. 158 F. 2d 614. See also, Foster et al. v. Illinois, — U. S. —, — S. Ct. —, —L. Ed. —; Gayes v. New York, 331 U. S. —, — S. Ct. —, — L. Ed. —.

De Meerleer v. People of the State of Michigan, — U. S. —, — S. Ct. —, 91 L. Ed. 471, recently decided by the United States Supreme Court, to which reference is made by relator, is not applicable or controlling, as relator was not charged with a capital crime. It was there held that a seventeen-year-old defendant on trial for murder was deprived of his rights essential to a fair hearing under the Federal Constitution where at no time was assistance of counsel offered or mentioned to him, where he was never advised of his right to counsel, and where he was not apprised of the consequences of his plea.

Relator was not entirely ignorant of criminal procedure. In 1937 he had been arrested in Pittsburgh for burglary and larceny, and sent to Thorn Hill School where he was confined for ten months. This fact he admits in his application to the Board of Pardons, and it is not consistent with the statement in his brief as to his first appearance in criminal court.

Order is affirmed.

[fols. 23-29a] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 30] IN THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

Miscellaneous Docket No. 1482A

COMMONWEALTH OF PENNSYLVANIA ex rel. ELMER UVEGES,
Appellant,

vs.

STANLEY P. ASHE, Warden Western State Penitentiary, Pittsburgh, Pennsylvania

PETITION FOR ALLOWANCE OF APPEAL FROM ORDER OF THE SUPERIOR COURT OF PENNSYLVANIA AT No. 148, APRIL TERM, 1947—Filed August 22, 1947

To the Honorable, the Chief Justice and Justices of said Court:

Petitioner, Elmer Uveges, respectfully informs this Court that his appeal made in the court below was founded on grave questions of constitutional rights, and of a nature to warrant a review of said court's order and judgment. He therefore prays that for reasons herein set forth, this petition be granted.

1. Appellant submits that the judgment of the court below is at variance with its own rulings in earlier cases holding a similar prayer, and contrary to rulings by the U. S. Supreme Court; in particular a quite recent one, viz., De Meerleer vs. Michigan, 67 U. S. 596, February 3, 1947.

2. An undue measure of weight is given to a presumption of guilt and punishment deserved, to the detriment of a fair consideration for the legal matter involved. In DeMeerleer vs. Michigan, supra, the question of guilt or innocence did not enter or receive attention from our highest court. Nor was it adversely considered in Com. vs. Valerio, 118 Pa. Superior Court 34, 178 A. 509 wherein the Court said: "While there may not have been much doubt as to the guilt of the defendant, yet his conviction should not be attended by a denial of constitutional rights guaranteed to every individual."

[fol. 31] 3. It is erroneously accepted by the court below without support, that a single plea of "guilty" in court was a "blanket plea" to more than one indictment, given without reservation with the full knowledge and consent of the defendant. This has been and is again denied. The record will disclose no waiver or agreement by which the defendant surrendered his right to answer severally to any and all indictments returned against him, for in no other procedure would he or the court know the exact nature of the charges contained therein, or "that the judgment shall be so certain as to enable him to plead it effectually to a subsequent prosecution for the same offense." (Com. ex rel. Fagan vs. Francis, 53 Pa. Super. Ct. 278, 279.) Nor does it appear that any waiver with-holding presentation to the Grand Jury the said four bills of indictment was signed, or a waiver of arraignment. The District Attorney in his Answer in the Court of Common Pleas denied that *any* waiver was signed. Therefore, under Rule 47 of this Court, all claims set forth in Appellant's Brief remaining unchallenged and not disputed may be construed as facts.

It was contended in the court below that where indictments were not read and pleaded to severally, each indictment should be endorsed with the signature of the defendant in order to meet explicitly the requirements of Act of April 15, 1907, P.L. 62, 19 P.S. sec. 241, unless by recorded waiver the right to plead severally is relinquished. In the instant case it appears that there was lacking not only the defendant's signatures, but those of the District Attorney and clerk as well, only the sentences being initialed by the judge. In this situation appellant cited Com. ex rel. Fagan vs. Francis, 53 Pa. Super. Ct. 278; Com. ex rel. Mayernick vs. Ashe, 139 Pa. Super Ct. 421, 12 A. 2d 452. The court recognized merit in the claim but declares: "Such a defect may be cured by subsequent proceedings in open court." A search of the record reveals no subsequent proceedings, beyond the single plea of guilty and sentences, sufficient to cure the defects in four indictments, nor is there any claim in the Opinion that there was a subsequent proceeding.

[fol. 32] 4. At page 3 the court states: ". . . relator does not now assert that he is innocent of all the crimes charged in the indictments." This is partly correct. But several times in his Brief, and especially at Summation he avers his innocence to all indictments save *one*. Again at

page 3: ". . . he has not undertaken to specify to which of the offenses charged his plea of guilty was confined." Because no indictment was read, such a feat is an impossibility.

5. In relation to the procedure as adopted in this case, appellant in the court below quoted excerpts from several rulings in support of his claims. (Com. ex rel. Fagan vs. Francis, supra; Com. ex rel. Mayernick vs. Ashe, supra; Com. ex rel. Penland vs. Ashe, 142 Pa. Superior Ct. 403, 19 A. 2d 464. There is no indication that they were accorded any consideration. Of those chosen by the court to support its judgment, one was prominently set forth as "closely analogous" to the instant case, to wit, Com. ex rel. Dende vs. Ashe, 144 Pa. Superior Ct. 598, 20 A. 2d 802. In said case only *one* bill of indictment was disputed, not *four*. Dende, one of the relators, was a well-educated adult, not a frightened seventeen-year-old boy. By his own signature he waived arraignment. There was no additional claim of lack of counsel. The analogy thus far appears to center on the absence of necessary signatures. At this point the court remarked: "Had the record ended there the relator's appeals would have had considerable merit," and cited specifically the cases of Fagan vs. Francis; Mayernick vs. Ashe, supra; and Penland vs. Ashe, supra. Thus, if the analogy be a true one, the court's remark appears well-fitted here. But here also all analogy ends.

In the Dende case there was a *subsequent* proceeding sufficient in the mind of the court for the cure of one faulty indictment. The defendants (4) readily admitted their guilt to the one charge, going so far as to describe the part each played in the commission of the robbery.
[fol. 33] Their *sworn testimony* and that of the complainant was *transcribed for the record*. And now since no such proceeding was had in the instant case, appellant respectfully submits that failure so to do constitutes error.

6. It is true that in February, 1946, an application to the Board of Pardons for clemency contains a statement, to wit, "The present conviction entails four burglaries." Within reason this Court might be asked to reject the implication assumed by the court below on the ground that in order to be self-sustaining, the authority and justification for a prison sentence must be before the sentencing court

and not predicated on a theory that these necessary elements may develop with the passage of years. However, it is felt that a true version of the matter is due this Court.

The Pardon Board demands that all applications for clemency be typewritten. Appellant owns no typewriter. Therefore the task must be assigned to someone who does. The prison records were used in formulating answers to questions asked because, whether rightly or wrongly, this is generally considered the wisest course toward favorable action. It must be remembered that appellant has not the training of a lawyer capable of foreseeing and avoiding complicated technicalities, and if the term—"The present conviction" appears ambiguous, the fault may lie in poorly chosen words.

Right to Counsel

Denial of appellant's claim to his constitutional right to have assistance of counsel is set forth in paragraphs numbered 1 to 5. For brevity and clarity reasons for review will use corresponding numbers.

[fol. 34] 1. More informative the quotation here reads: "In *all* criminal prosecutions the accused hath a right to be heard by himself *and* his counsel."

2 & 3. These two paragraphs distinguish between capital crimes and *all* criminal prosecutions. The Brief to the court below cites Com. ex rel. Otto Schultz vs. Herbert Smith, 139 Pa. Sup. 357. Schultz was charged with rape. In a lengthy opinion by the late Judge Keller, other cases were cited wherein the appellants were charged with crimes other than murder. Thus it appears that this appellant's claim in the court below should not have been denied because he was not charged with a capital crime. In the Schultz case, supra, Judge Keller wrote: "The purpose of the constitutional guaranty of a right to counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights, and the guaranty would be nullified by a determination that an accused's ignorant failure to claim his rights removes the protection of the Constitution."

4. Appellant believes that the recent unanimous ruling by the U. S. Supreme Court in DeMeerleer vs. Michigan,

67 U. S. 596, has modified the heretofore held precept that the Sixth Amendment to the Federal Constitution applies only to trials in Federal Courts. In that case the Michigan Supreme Court held that the Michigan rule was determinative. This was held to be error (see also Powell vs. Alabama, 287 U. S. 45, 68, 69). It is worthy of note that in Schultz vs. Smith, supra, the court cites Johnson vs. Zerbst, 304 U. S. 458, and from the repeated references to it, one might reasonably assume that it had a potent voice in the courts' deliberations. And this latter case was confined solely to Federal Courts.

5. Appellant does not presume to construe the Fourteenth Amendment. To him its simple terms promise that before the Bar of Justice all men meet on common ground, with special privilege or favored protection for none.

[fol. 35] It gives assurance, too, that this petition, crudely prepared by a layman who entered prison when scarcely seventeen, and submitted under a pauper's oath, will receive the same serious consideration as if it had been presented by the nation's most brilliant lawyer.

The court below has determined that because appellant was not charged with murder, the ruling in De Meerleer vs. Michigan, 67 U. S. 596, supra, "is not applicable or controlling." Respectfully submitted, this is error. To hold that only one accused of the most heinous of all crimes (murder) may find refuge and protection under the Constitution would tend not only to vitiate the farsighted idealism in the great minds which conceived the Fourteenth Amendment, but would transform it into an instrument worn out and abandoned because of age and ill use. Mr. Chief Justice Vinson in De Meerleer vs. Michigan, supra, did not restrict his words to murder alone when he said: "Here a seventeen-year-old defendant confronted by a serious and complicated criminal charge . . ."

It is respectfully submitted that never has there been an analogy more close than that which exists between the instant case and that of De Meerleer vs. Michigan extending even to the serious consequences to each. Since Michigan does not subscribe to capital punishment, De Meerleer received a life sentence. Appellant was given twenty to forty years. Who can say which boy would be the first to regain his liberty.

A final paragraph by the court below impugns a claim of "first appearance in criminal court," and that "he was not entirely ignorant of criminal procedure." It is true that appellant previously had been committed to Thorn Hill for the offense mentioned. But this was a commitment from Juvenile Court, from which experience he would hardly become familiar with criminal procedure. A seventeen-year-old boy in criminal court for the first time would more likely to be a fear-stricken creature trapped and at bay in hostile territory, surrounded by stern, unfamiliar faces.

[fol. 36] No friendly glance comes his way; no helping hand. Blindly subservient he follows the course demanded by the prosecuting official until too late he learns what his ignorance of "criminal procedure" has cost him.

Summation

In brief the three points of issue upon which appellant prays that his petition be granted are:

1. The aforementioned four "bills of indictment," bare of any signature, were instruments wi*ht*out any legal standing in law, because of their obvious failure to comply with Act of April 15, 1907, P. L. 62, 19 P. S. 241. Therefore it was improper for the court to exact a plea to either of them because they lacked legal value. To assume that legality was achieved by the court's endorsement of the sentences, *after judgment had been rendered* is contrary to the rule that legality must be present *before* judgement may be rendered.

2. The court below has not definitely ruled on the legality and authority for the use of a "blanket plea" without the consent, waiver or knowledge of the defendant.

3. The court below in denying appellant's right to counsel is in error.

Appellant therefore will ever pray, etc.

Respectfully submitted, Elmer Uveges, Appellant.

[fol. 37] *Duly sworn to by Elmer Uveges. Jurat omitted in printing.*

[fols. 38-42] IN THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

[Title omitted]

Petition

To the Honorable, the Chief Justice and Justices of said Court.

Before me, a notary public, in and for said County of Allegheny, Commonwealth of Pennsylvania, personally appears Elmer Uveges who, being duly sworn according to law, on oath deposes and says he is a citizen of these United States and a pauper, without funds of any kind with which to secure counsel to commence, prosecute and defend to conclusion his grievances set forth in his appeal from order of the Superior Court of Pennsylvania No. 148, filed July 17, 1947, said appeal being true and correct to the best of his knowledge and belief. This appeal is not instituted for the purpose of delay, but solely because appellant believes justice requires it.

Respectfully submitted, Elmer Uveges, Appellant.

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss.:

Subscribed and sworn to this 20th day of August, 1947.
R. C. Wieseckel, Notary Public. (Seal.)

My Commission expires May 1, 1948.

Elmer Uveges, Appellant.

[fols. 42a-46a] [Endorsed:] No. 1482A. Pa. 358. Miscellaneous Docket. Commonwealth of Pa. ex rel. Elmer Uveges, Apt. v. Stanley P. Ashe, Warden, etc. Petition for allowance of Appeal. Order. September 29, 1947. Petition Denied. Per Curiam. Filed Aug. 22, 1947. Supreme Court, Western District. Service accepted this 22 August, 1948. George F. A. Langfitt, 1st Asst. D. A.

[fol. 47] IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1948

No. 75

ELMER UVEGES

vs.

COMMONWEALTH OF PENNSYLVANIA

STIPULATION AS TO INDICTMENTS

It is hereby stipulated and agreed by and between counsel for appellant, Albert A. Fiok and counsel for appellee, William S. Rahauser, District Attorney of Allegheny County, Pennsylvania, that indictments numbered 81, 82, 83, 84, 85, 86, 87 and 93, October Sessions, 1938 of the Court of Oyer and Terminer, Allegheny County, Pennsylvania and No. 741, October Sessions, 1938 for the Court of Quarter Sessions for the Peace of Allegheny County, Pennsylvania are all of the indictments against the appellant and that said indictments are included in the record for purposes of this appeal.

(S.) William S. Rahauser, Albert A. Fiok.

D. A. Indictment. Form 37

In the Court of Oyer and Terminer and General Jail Delivery

For the County of Allegheny

Of October Sessions, A. D. 193 8.

ALLEGHENY COUNTY, SS.

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the C[illegible]y, upon their oaths and solemn affirmations, respectively, DO PRESENT, That

Mark McKim, otherwise called Gustave McKim, and Elmer Uveges

late of the County aforesaid, on the **first** day of **September** in the year of our Lord, one thousand nine hundred and **thirty-eight** about the hour of eleven in the night of the same day, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the dwelling house of

Abraham Falk

there situate, feloniously and burglariously did break and enter, with intent the goods, chattels, moneys and property of the said **Abraham Falk** in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take and carry away, and

one purse of the value of five dollars;
the sum of five dollars, lawful money of the Government of the United States;
one wallet of the value of three dollars and fifty cents,

late of the County aforesaid, on the **first**
day of **September** in the year of our Lord, one thousand nine hundred
and **thirty-eight** about the hour of eleven in the night of the same day, at the County aforesaid,
and within the jurisdiction of this Court, with FORCE AND ARMS, the dwelling house of

Abraham Falk

there situate, feloniously and burglariously did break and enter, with intent the goods, chattels, moneys and
property of the said **Abraham Falk**
in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take
and carry away, and

one purse of the value of five dollars;
the sum of five dollars, lawful money of the Government of the United States;
one wallet of the value of three dollars and fifty cents,

of the goods, chattels, and property of the said **Abraham Falk**

then and there being found, then and there feloniously
and burglariously did steal, take and carry away, contrary to the form of the Act of the General Assembly
in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

24

AND THE INQUEST AFORESAID, upon their oaths and solemn affirmations aforesaid, DO FURTHER PRESENT, That the said

afterwards to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the goods,
chattels and property aforesaid, by some person whose name is to said Inquest unknown then lately before feloniously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain, feloniously did receive and have (the said

then an[illegible]ere, well knowing the goods, , chattels
and property last mentioned, to have been feloniously stolen, taken and carried away)
contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.

Walter C. Monaghan

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

SWORN BY ME

FOREMAN

D. A. Indictment. Form 37

In the Court of Oyer and Terminer and General Jail Delivery

For the County of Allegheny

Of October Sessions, A. D. 193 8.

ALLEGHENY COUNTY, SS.

The Grand Inqurst of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That

Mark McKim, otherwise called Gustave McKim, and
Elmer Uveges

late of the County aforesaid, on the thirty-first
day of August in the year of our Lord, one thousand nine hundred
and thirty-eight about the hour of eleven in the night of the same day, at the County aforesaid,
and within the jurisdiction of this Court, with FORCE AND ARMS, the dwelling house of

W. M; Price

there situate, feloniously and burglariously did break and enter, with intent the goods, chattels, moneys and
property of the said W. M. Price
in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take
and carry away, and

one platinum ring of the value of five hundred dollars;
one wrist watch of the value of one hundred and fifty dollars;
one ladies purse of the value of five dollars;
one fraternity pin of the value of seventy-five dollars;
the sum of twenty-four dollars, lawful money of the Government of
the United States,

26

AND THE INQUEST AFORESAID, upon their oaths and solemn affirmations aforesaid, DO FURTHER PRESENT, That the said

afterwards to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the goods,
chattels and property aforesaid, by some person whose name is to said Inquest unknown then lately before feloniously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain, feloniously did receive and have (the said

then and there, well knowing the goods, , chattels
and property last mentioned, to have been feloniously stolen, taken and carried away)
contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.
Peter J. Leheny

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

SWORN BY ME

FOREMAN

6273

Attempt - O & I

No. 82

October Sessions 193 8

Commonwealth

vs.

Mark McKim, alias Gustave McKim and Elmer Uveges.

INDICTMENT:

FIRST COUNT:

BURGLARY

SECOND COUNT:

RECEIVING STOLEN GOODS

Prosecutor

Peter J. Leheny

On 193

TRUE BILL

Foreman

And now OCT 27 1938 193 , de-
fendant having been arraigned with
the assistance of counsel and having
pleaded guilty to the charge of 193
The Defendant
pleaded guilty thereto,
which plea is entered at request
As to each Defendant

L

D-13

596

And now OCT 27 1938 19

Defendant sentenced to pay a fine of 6¼ cents to the Commonwealth, Pay costs of prosecution, and undergo an imprisonment at separate and solitary confinement at labor of not less than five years or more than Ten years in the Western Penitentiary and stand committed As to each Defendant This Sentence to begin and take effect at the expiration of Sentence imposed at No 81 October 1938.

As to each Defendant

By The Court

49a

No. 81

October Sessions, 193 8.

Commonwealth

vs.

Mark McKim, alias Gustave McKi
and Elmer Wages

INDICTMENT:

FIRST COUNT:

BURGLARY

SECOND COUNT:

RECEIVING STOLEN GOODS

Prosecutor

Walter G. Monaghan

On 193

TRUE BILL FILE

And now OCT 27 1938 193 , defendant ~~having been charged with~~ the offence herein set forth and having notified the District Attorney of 193 ~~his~~ willingness to enter a plea of guilty ~~the Defendant~~ ment having been there- ~~appointed~~ defendant after read- ~~ing~~ plead guilty thereto ~~which~~ plea is entered at ~~his~~ request.

As to each Defendant

And now OCT 27 1938 19

Defendant sentenced to pay a fine of $1/4 cents to the Commonwealth, Pay costs of prosecution and undergo an imprisonment at solitary and separate confinement at labor of not less than five years or more than Ten years in the Western Penitentiary and stand committed This sentence to be computed from date of commitment to wit October 15th, 1935. As to each Defendant

By the Court

P

48a

L 596

of the goods; chattels, and property of the said W. M. Price

then and there being found, then and there feloniously and burglariously did steal, take and carry away, contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

D. A. Indictment. Form 37

In the Court of Oyer and Terminer and General Jail Delivery

For the County of Allegheny

Of October Sessions, A. D. 193 8.

ALLEGHENY COUNTY, SS.

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That

Mark McKim, otherwise called Gustave McKim,
and Elmer Uveges

late of the County aforesaid, on the fifteenth day of July in the year of our Lord, one thousand nine hundred and thirty-eight about the hour of eleven in the night of the same day, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the dwelling house of

Arthur A. Lawrence

there situate, feloniously and burglariously did break and enter, with intent the goods, chattels, moneys and property of the said Arthur A. Lawrence

in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take and carry away, and

one gold pocket watch of the value of thirty dollars;
one diamond ring of the value of two hundred and fifty dollars;
one gold wrist watch of the value of thirty dollars;
one gold watch of the value of forty dollars;
the sum of fifty cents, lawful money of the Government of the United States,

28

AND THE INQUEST AFORESAID, upon their oaths and solemn affirmations aforesaid, DO FURTHER PRESENT, That the said

afterwards to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the goods,
chattels and property aforesaid, by some person whose name is to said Inquest unknown then lately before feloniously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain, feloniously did receive and have (the said

then and there, well knowing the goods, chattels and property last mentioned, to have been feloniously stolen, taken and carried away)
contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.

Peter J. Leheny

SWORN BY ME

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

FOREMAN

In the Court of Oyer and Terminer and General Jail Delivery

For the County of Allegheny

Of October Sessions, A. D. 1938.

ALLEGHENY COUNTY, SS.

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That

Mark McKim, otherwise called Gustave McKim and Elmer Uveges

late of the County aforesaid, on the sixteenth day of September in the year of our Lord, one thousand nine hundred and thirty-eight about the hour of eleven in the night of the same day, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the dwelling house of

J. R. Lloyd

there situate, feloniously and burglariously did break and enter, with intent the goods, chattels, moneys and property of the said J. R. Lloyd in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take and carry away, and

two gent's hats of the value of twelve dollars and fifty cents each,
one platinum wedding ring of the value of fifty dollars,
one gent's watch of the value of fifty dollars,
the sum of fifty-two dollars, lawful money of the Government of the United States,

AND THE INQUEST AFORESAID, upon their oaths and solemn affirmations aforesaid, DO FURTHER PRESENT, That the said

afterwards to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the goods,
chattels and property aforesaid, by some person whose name is to said Inquest unknown then lately before feloniously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain, feloniously did receive and have (the said

then and there, well knowing the goods, , chattels and property last mentioned, to have been feloniously stolen, taken and carried away)
contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.
Ward C. Sanders

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

SWORN BY ME

FOREMAN

Form 9. District Attorney.

IN THE
Court of Oyer and Terminer and General Jail Delivery
For the County of Allegheny

Of October *Sessions, A. D. 193*8.

Allegheny County, ss.

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That

Mark McKim, otherwise called Gustave McKim and Elmer Uveges

late of the County aforesaid on the twenty-sixth day of September in the year of our Lord one thousand nine hundred and thirty-six in the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS and on divers other days and dates, in the night time feloniously and burglariously did break and enter the dwelling houses of J. C. Weir, James Bowman, W. York Cockene, T. H. Bloom, Adolph Klein, Samuel Frankel, J. R. Lloyd, Mrs. J. P. Rogers, and the building of Scarborough and Klaus, with intent to commit a felony,

6272 O & T (32) (52a)

No. 85

October Sessions, 1938.

Commonwealth

VS.

Mark McKim, alias
Gustave McKim and
Elmer Uveges

INDICTMENT:

Burglary

Prosecutor

Ward C. Sanders

On 193

TRUE BILL.

..... Foreman.

..... 193

The Defendant, OCT 27 1938 193, defendant having been charged with the offence herein set forth and having conferred the District Attorney of ... his consents to enter a plea of guilty to this indictment hereby, been thereupon requested defendant after reading same do plead guilty thereto, which plea is entered at request.

As to each Defendant

Ep die. Above Certified to Court over & turned for trial & disposition.

OCT 27 1938 19..... sentence suspended on payment of costs of prosecution by county by reason of Sentence at No. 8-12-13-14 Oct 1938

As to each Defendant

To the Court

6273

No. 83

October Sessions, 1938

Commonwealth

vs.

Mark McKim, alias Gustave McKim and Elmer Uveges

INDICTMENT:

FIRST COUNT:

BURGLARY

SECOND COUNT:

RECEIVING STOLEN GOODS

Prosecutor

Peter J. Lahany

On ..... 193 .....

TRUE BILL

FILE

And now OCT 27 1938 193 , defendant having been charged with the offence herein set forth and having notified the District Attorney of 193 within ~~mess~~ to enter a plea of guilty and The Defendant ~~ment~~ having been thereupon prepared defendant after reading same do plead guilty thereto, which plea is entered at request

As to each Defendant

L

D-17

578

And now OCT 27 1938 19

Defendant sentenced to pay a fine of 6 1/4 cents to the Commonwealth, Pay costs of prosecution; and undergo an imprisonment at separate and solitary confinement at labor of not less than ~~five~~ years or more than ten years in the Western Penitentiary and stand committed As to each Defendant This sentence to begin and take effect at the expiration of sentence imposed at No 82 October 1938

As to each Defendant

By The Court

P

50a

of the moneys, goods, chattels, and property of the said J. R. Lloyd

then and there being found, then and there feloniously and burglariously did steal, take and carry away, contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

[redacted] 19 ... sentence
[redacted] payment of costs of
[redacted] court by reason of
[redacted] 19 ...

And now OCT 27 1938 19 ...
Defendant sentenced to pay a fine of 6¼ cents to the Commonwealth, Pay costs of prosecution; and undergo an imprisonment in separate and solitary confinement at labor of not less than five years or more than ten years in the Western Penitentiary and stand committed As to each Defendant This Sentence to begin and take effect the expiration of Sentence imposed at No. 83 October 1938.
As to each Defendant
By The Court
...P

51a

8272

No. 84

October Sessions 1938.

Commonwealth

vs.

Mark McKim, alias
Gustave McKim, and
Elmer Uveges

INDICTMENT:

FIRST COUNT:

BURGLARY

SECOND COUNT:

RECEIVING STOLEN GOODS

Prosecutor

Ward C. Sanders

On ... 193...

TRUE BILL

And now OCT 27 1938 193..., defendant ... charged with the offence ... Pleads ... Plea ... noted ... will ... and ... upon ... ing same ... which plea ... at ...

The Defendant ... been thereupon ... guilty thereto

As to each Defendant

10-13
5-16
M

contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.
Ward C. Sanders

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

SWORN BY ME,

FOREMAN

52

31

of the goods; chattels, and property of the said **Arthur A. Lawrence**

then and there being found, then and there feloniously and burglariously did steal, take and carry away, contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

27

50

D. A. Indictment. Form 37

In the Court of Oyer and Terminer and General Jail Delivery

For the County of Allegheny

Of October Sessions, A. D. 1938.

ALLEGHENY COUNTY, SS.

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That

Mark McKim, otherwise called Gustave McKim and Elmer Uveges

34

AND THE INQUEST AFORESAID, upon their oaths and solemn affirmations aforesaid, DO FURTHER PRESENT, That the said

afterwards to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the goods,
chattels and property aforesaid, by some person whose name is to said Inquest unknown then lately before feloniously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain, feloniously did receive and have (the said

then and there, well knowing the goods, , chattels
and property last mentioned, to have been feloniously stolen, taken and carried away)
contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.

Walter C. Monaghan

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

SWORN BY ME

FOREMAN

Form 9. District Attorney.

IN THE

Court of Oyer and Terminer and General Jail Delivery

For the County of Allegheny

Of October *Sessions, A. D. 193*8.

Allegheny County, ss.

The Grand Inquest *of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That*

Mark McKim, otherwise called Gustave McKim and Elmer Uveges

late of the County aforesaid on the twenty-sixth

day of August in the year of our Lord one thousand nine hundred

and thirty-eight in the County aforesaid, and within the jurisdiction of this Court, with

FORCE AND ARMS and on divers othere days and dates, in the night time feloniously and burglariously did break and enter the dwelling houses of Anthony Ortenzo, R. F. Mehl, and Mrs. James Martin, with intent to commit a felony,

late of the County aforesaid, on the third
day of September in the year of our Lord, one thousand nine hundred
and thirty-eight about the hour of eleven in the night of the same day, at the County aforesaid,
and within the jurisdiction of this Court, with FORCE AND ARMS, the dwelling house of

Homer A. Smith

there situate, feloniously and burglariously did break and enter, with intent the goods, chattels, moneys and
property of the said Homer A. Smith
in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take
and carry away, and
a certain amount of old coins a more particular description of which is
to this Inquest unknown and being of the value of two hundred dollars,

of the goods, chattels, and property of the said Homer A. Smith

then and there being found, then and there feloniously
and burglariously did steal, take and carry away, contrary to the form of the Act of the General Assembly
in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

6270

OCT 27 1938

.....19..... sentence suspended on payment of costs of prosecution by county by reason of Sentence at No. 11-12-13-14 Oct 1938

As to each Defendant

By The Court.

Feltman

No. 57 & 57

.....October..... Sessions, 193 8.

296/140

Commonwealth

VS.

Mark McKim, alias
Gustave McKim, and
Elmer Uveges

INDICTMENT:

Burglary

Prosecutor.

.....Walter C. Monaghan.....

On.....193

TRUE BILL.

FILE

.....Foreman.

And now OCT 27 1938 193 193, defendant having been charged with the offence herein set forth and having [illegible] upon [illegible] other pending [illegible] which [illegible] request.

The Defendant

As to each Defendant

D 13

M.697

(P. 36)

(54A)

6270

No. 86

October Sessions, 193 8.

Commonwealth

vs.

Mark McKim, alias
Gustave McKim, and
Elmer Uveges

INDICTMENT:

FIRST COUNT:

BURGLARY

SECOND COUNT:

RECEIVING STOLEN GOODS

Prosecutor

Walter C. Monaghan

On 193

TRUE BILL

FILED

Foreman.

And now OCT 27 1938 193 defendant having been charged with the offence herein set forth and having notified the District Attorney of 193 willingness to enter a plea of guilty and this indictment having been thereupon prepared defendant after reading same do plead guilty thereto which plea is entered at request.

The Defendant

As to each Defendant

D-13

M 597

OCT 27 1938 19 sentence suspended on payment of costs of prosecution by county by reason of Sentence at No. 81-82-83-84 Oct. 1938

As to each Defendant

By The Court

53a

contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.
Walter C. Monaghan

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

SWORN BY ME,

FOREMAN

Form 8. District Attorney.

D

IN THE
Court of Oyer and Terminer and General Jail Delivery

For the County of Allegheny

Of October *Sessions, A. D. 193*8.

Allegheny County, ss.

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That

Mark McKim, otherwise called Gustave McKim, and Elmer Uveges

late of the County aforesaid on the **seventh**

day of **July** in the year of our Lord one thousand nine hundred

and **thirty-eight** in the County aforesaid, and within the jurisdiction of this Court, with

FORCE AND ARMS **and on divers other days and dates unlawfully and feloniously in the night time did then and there burglariously break and enter the dwelling houses of R. Q. Cleavenger; T. Pearlman; J. Sodzik; W. Black; L. J. Rosenfield; M. Kaufmann; J. Gootlieb; A. Cooper; L. Gordon; B. P. Lazar; Ruben Felman; H. R. Sauers; A. S. Goorin; T. J. Lerner; W. McCann; E. Belle; J. H. Dice; C. Benjamin; F. C. Hoffman; J. M. Yenias; H. Schwartz; J. F. Cohen; M. Watchel; R. P. Middleton; R. Solomon; M. J. Goodman; Lena Woolhandler; Joseph Levandowski; Julius Goldberg; Y. Kridky; Jacob Richman; Mrs. Max Schoen; and Julius Goldstein; with intent in them, the said Mark McKim, otherwise called Gustave McKimm, and Elmer Uveges, the goods, moneys, chattels and property in the said dwelling houses as aforesaid then and there being found, then and there to feloniously take, steal and carry away,**

OCT 27 1938

.....19 ..... sentence suspended on payment of costs of prosecution by county by reason of Sentence at No 8-12-13-14 Oct 1938

As to each Defendant

By The Court

P

6273

No. 93

October Sessions, 1938

Commonwealth

VS.

Mark McKim, alias Gustave McKim; and Elmer Uveges

INDICTMENT:

BURGLARY

Prosecutor

Peter J. Leheny

On 193

TRUE BILL.

D. A. Indictment Form 17

IN THE

Court of Quarter Sessions of the Peace

FOR ALLEGHENY COUNTY.

Of October *Sessions, 1938.*

Allegheny County, ss:

The Grand Inquest *of the Commonwealth of Pennsylvania now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That*

Mark McKim, otherwise called Gustave McKim, and Elmer Uveges

late of the County aforesaid, on the **ninth** day of **September** in the year of our Lord one thousand nine hundred and **thirty-eight**, in the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, in and upon one **Wilma Harris** in the peace of God and of this Commonwealth, then and there being, feloniously did make an assault, and with a certain loaded **revolver** which he, the said **Mark McKim, otherwise called Gustave Mc Kim, and Elmer Uveges** in his right hand then and there had and held, did then and there feloniously shoot off and discharge at the person of the said **Wilma Harris**

with intent, **her** the said **Wilma Harris**

wise called Gustave Mc Kim, and Elmer Uveges in his right hand then and there had and held, did then and there feloniously shoot off and discharge at the person of the said **Wilma Harris**

with intent, **her** the said **Wilma Harris**

then and there feloniously to kill and murder, contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

AND THE INQUEST AFORESAID, upon their oaths and solemn affirmations aforesaid, DO FURTHER PRESENT, That the said

on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, unlawfully did, playfully and wantonly, point and discharge a certain loaded at the person of

contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.
Walter C. Monaghan

District Attorney for Allegheny County

Sworn by me.

Foreman

'56

63

contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.

Peter J. Leheny

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

SWORN BY ME,

FOREMAN

[redacted]

INDICTMENT:

BURGLARY

Prosecutor

Peter J. Lohany

On 193

TRUE BILL.

..... Foreman.

OCT 27 1933

And now ..... 193 ..... 193, defendant. The Defendant having been charged with the offence herein set forth and having notified the District Attorney of willingness to enter a plea of guilty and this indictment having been thereupon prepared defendant after reading same do ..... plead guilty thereto, which plea is entered at ..... request

D-13

L

As to each Defendant 599

OCT 27 1938 19..... sentence suspended on payment of costs of prosecution by county by reason of Sentence at No. 81-82-83-84 Dec. Sess. 1938
As to each Defendant

By The Court

6271

No.

741 October Session, 1938.

Commonwealth

vs.

Mark McKim, alias Gustave McKim and Elmer Uveges

INDICTMENT:

First Count—Felonious Assault.

Second Count—Pointing Firearms.

Prosecutor

Walter C. Monaghan

On ..... 192..

TRUE BILL.

Eo. die. Alias Certified to Court

FILED

Commonwealth

vs.

Mark McKim, alias Gustave McKim and Elmer Uveges

INDICTMENT:

First Count—Felonious Assault.

Second Count—Pointing Firearms.

Prosecutor

Walter C. Monaghan

On ..... 192..

TRUE BILL.

Eo. die. Alias Certified to Court

FILED

Over & Terminer for trial and disposition.

Foreman

..... 192....

The Defendant

And now OCT 27 1938 193..., defendant having been charged with the offence herein set forth and having notified the District Attorney of willingness to enter a plea of guilty and this indictment having been thereupon prepared defendant after reading same do plead guilty thereto which plea is entered at request.

As to each Defendant

[fol. 57] IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1948

No. 75

ELMER UVEGES

vs.

COMMONWEALTH OF PENNSYLVANIA

STIPULATION IN RE TESTIMONY

It is hereby stipulated and agreed between counsel for Appellant, Albert A. Fiok, and counsel for Appellee, William S. Rahauser, District Attorney for Allegheny County, Pennsylvania, as follows:

1st. That Exhibit "A" attached hereto and made a part hereof and designated "Stenographer's Notes" contains the entire account of the hearing in the Court of Oyer and Terminer, Allegheny County, Pennsylvania, resulting in the conviction of Elmer Uveges, Appellant herein.

2nd. That said notes are abbreviated and are not and do not purport to be a complete word for word transcript of the unsworn testimony taken at said hearing.

3rd. That said notes, while strictly not a part of the record, are included for the purpose of this appeal since it is believed that they will aid this Court in understanding the nature and extent of the aforesaid original hearing.

Albert A. Fiok, Attorney for Appellant; William S. Rahauser, District Attorney for Allegheny County, Pennsylvania, Attorney for Appellee.

Dated September 13, 1948.

[fol. 58] EXHIBIT "A" STENOGRAPHER'S NOTES

Narrative Transcript of Plea
Judge's File No. 60

Date 10/27/38

No. 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 93 and 741 Oct. 1938.

Name Mark McKim alias Gustave McKin and Elmer Uvages.

Charge: See Below.

Judge Patterson, Dist. Att'y Langfitt.

Sentence: Both defendants sentenced to the Western Penitentiary for the period of not less than 5 nor more than 10 years at No. 81 Oct. 1938. Same sentence at No. 82 Oct. 1938 to begin at the expiration of sentence at No. 81 Oct. 1938. Same sentence at No. 83 Oct. 1938 to begin at the expiration of sentence at No. 82 Oct. 1938. Same sentence at No. 84 Oct. 1938 to begin at the expiration of sentence at No. 83 Oct. 1938.

Sentence in other cases suspended by reason of the above.

Mr. Langfitt: There are a total of 67 charges of burglary against these men, 7 charges of Violations of the Firearms Act, 2 charges of Pointing Firearms and one charge of Felonious Assault. Of the 67 cases of Burglary, 13 were committed by McKim alone and the balance by the two defendants acting together. Because of the great number of cases involved, a number of them have been grouped together under one indictment. At No. 81 the defendants are charged with entering the dwelling house of Abraham Falk on Sept. 1st, 1938 and taking one purse of the value of $5, the sum of $5 in cash and one wallet of the value of $3.50. At No. 82 the defendants are charged with entering the dwelling house of W. H. Pride on August 31, 1938 and taking 1 platinum ring of the value of $500, one wrist watch of the value of $150, one ladies purse of the value of $5, one fraternity pin of the value of $75 and the sum of $24 in cash. At No. 83 the defendants are charged with entering the dwelling house of Arthur A. Lawrence and taking one gold watch of the value of $30, one diamond ring of the value of $250, one gold wrist watch of the value of $30, one gold watch of the value of $40 and the sum of 50@ in cash. At No. 84 the defendants are charged with entering the dwelling house of J. R. Lloyd and taking therefrom two hats of the value of $12.50 each, one platinum wedding ring of the value $50, and the sum of $52 in cash. At No. 86 both defendants are charged with entering the dwelling house of Homer A. Smith and taking $200 in old coins, At No. 88 McKim is charged with entering the home of William Spinilli and taking the sum of $125, one revolver of the value of $30. At No. 90 McKim is charged with entering the dwelling of C. J. Seaman and taking one ladies diamond heirloom of the value of $1500, one gold coat ring of the value of $50, one gentlemen's yellow gold ring of the value of $20 and an assortment of old coins of the value of $20. At No. 741 October, 1938 the defendants are charged with

Felonious Assault on the person of Wilma Harris. The defendants admit the various charges set forth in the informations that have been filed.

Officer Cavanaugh: The only thing I know, we were getting calls about a series of robberies of these houses in the Squirrel Hill District. Our district runs from Forbes street over and the biggest part of these were supposed to have been committed on the other side of Forbes St. We got a call one night on the last house they got into on Bellrock St. and from information received located where the two defendants had been rooming on Howe St. Two days later we got a call to Scarborough and Grouse St. and when we got there we caught McKim and the other boy got away. We caught Uveges later in the vicinity of Howe St.

Mr. Langfitt: How did they get in these places?

Officer Cavanaugh: They would use a glass cutter and in this way get at the lock.

[fol. 59] Mr. Langfitt: Was this always in the night time?

Officer: No.

Mr. Langfitt: Were the people whose homes were entered at the- home when the- got in?

Officer: Not generally.

Mr. Langfitt: Did you recover most of the loot?

Officer: The biggest part of it in McKim's room.

Mr. Langfitt: Over what period of time were the entries made?

Officer: Between 2 and 2½ months.

Mr. Langfitt: Are you one of the parties whose home was entered?

Mrs. Price: Yes.

Mr. Langfitt: Just tell what happened there.

Mrs. Price: We *We* were sitting in the living room one evening. The windows in the rear of the house were locked and screened. We did not hear anything but later when I went back to look for my purse, I discovered all of the drawers had been pulled out and their contents on the floor or badly mussed up. We then discovered that whoever had come in had removed the screen and opened the latch on the window in some manner. I could not find my purse and then discovered that it was gone.

Mr. Langfitt: Did you see either of the defendants?

Mrs. Price: No, but now I recognize this boy (indicating McKim) as one whom I had seen loafing around the house later in the day.

Mr. Langfitt. Do you want to hear anything else Your Honor?

The Court: I want to hear about this charge of Felonious Assault.

Mrs. Wilma Harris, 945 Flemington Ave., Pittsburgh: It was around 2:45 in the morning of Sep. 9th. I thought I heard someone coming into my bedroom. I was awake at the time and I turned my head over so slightly and asked who was there. I did not get any answer and whoever it was went back down the hall. I then asked who was there again and when I said this someone said, "Shut up, if you don't shut up I will -et you have it". With that whoever it was shot and then my husband got up and they ran.

McKim: Age 17. States he has no home but that his mother lives at 363 South Negley Ave. Father died when he was very young. Sent to Orphans' home but released from there at the age of 11 and turned over to the Juvenile Court then sent to Rosedale where he stayed for two yrs. and was then placed by the Court with a family in Hazelwood. While in Hazelwood states he got in with the gang of 5 or 6 other boys [that]* and that they got into trouble for stealing cars. When released on that charge he was turned back to the Juvenile Court and the Court then placed him with a family in Squirrel Hill. States he knew something about stealing from his experience in *a* Hazelwood and after that just kept it up.. Met Uveges while a student at the Gladstone High School where he went as far as the 10th Grade. Upon returning to Pittsburgh Uveges started to live with him. Admits that the two of them had been entering these homes for a period of 3 months and that on the night they entered the Harris home both had guns which they had picked up from other houses they had entered. Admits that he fired all the cartridges from his gun on that occasion but claims that they did not always carry guns with them when the- entered other dwellings. States that they disposed of some of the things they had taken for old gold but retained most of the jewelry.

Uveges: Ages 17. Residence, Georgekay Road, Hazelwood. Lives [tih] with mother, father dead. Attended school until he reached the 10th grade. Has never worked at a steady job. Sent to Thorn Hill by the Juvenile Court and

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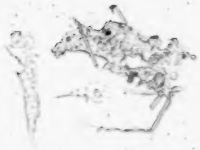
* Matter inclosed in brackets struck-out in copy.



released from that institution 5 months ago. States he and McKim began to enter dwellings on August 16, 1938.

[fol. 60] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 201, Misc.

On petition for writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS; GRANTING PETITION FOR CERTIORARI ETC.—June 7, 1948

On consideration of the motion for leave to proceed herein in *forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 844.